

**CONSENT FOR THE RELEASE
OF CONFIDENTIAL INFORMATION**

I, _____ authorize
(Name of patient)

(Name or general designation of alcohol/drug program making disclosure)

to disclose to _____,
(Name of person or organization to which disclosure is to be made)

the following information:

(Nature and amount of information to be disclosed, as limited as possible)

The purpose of the disclosure authorized in this consent is to:

(Purpose of disclosure, as specific as possible)

I understand that my alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. Pts. 160 & 164 and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

(Specification of the date, event, or condition upon which this consent expires)

I understand that I might be denied services if I refuse to consent to a disclosure for purposes of treatment, payment, or health care operations, if permitted by state law. I will not be denied services if I refuse to consent to a disclosure for other purposes.

I have been provided a copy of this form. Dated: _____

Signature of patient

Signature of person signing form if not patient

Describe authority to sign on behalf of patient _____

**CONSENT FOR THE RELEASE
OF CONFIDENTIAL INFORMATION:**

CRIMINAL JUSTICE SYSTEM REFERRAL

I, _____, authorize (initial whichever parties apply):
(Name of defendant)

☐ [The ABC Alcohol and Drug Treatment Program]
(Name or general designation of program making disclosure)

☐ [The Probation Department] employees supervising my case]

☐ [The Parole Department] employees supervising my case]

☐ _____,
(Name of the appropriate court)

☐ _____
(Name of prosecuting attorney)

☐ _____,
(Name of criminal defense attorney)

☐ _____
(Other)

to communicate with and disclose to one another the following information (nature and amount of the information as limited as possible):

_____ my diagnosis, urinalysis results, information about my attendance or lack of attendance at treatment sessions, my cooperation with the treatment program, prognosis, and

The purpose of the disclosure is to inform the person(s) listed above of my attendance and progress in treatment.

I understand that my alcohol and/or drug treatment records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. Pts. 160 & 164. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

[Specify the date, event or condition upon which this consent expires. This could be one of the following:]

_____ there has been a formal and effective termination or revocation of my release from confinement, probation, or parole, or other proceeding under which I was mandated into treatment, or

_____ (Specify other time when consent can be revoked and/or expires)

I understand that I might be denied services if I refuse to consent to a disclosure for purposes of treatment, payment, or health care operations, if permitted by state law. I will not be denied services if I refuse to consent to a disclosure for other purposes.

I have been provided a copy of this form.

Dated: _____
Signature of patient

Signature of person signing form if not the patient

Describe authority to sign on behalf of patient: _____

SAMPLE NOTICE PROHIBITING REDISCLOSURE

PROHIBITION ON REDISCLOSURE OF CONFIDENTIAL INFORMATION

This notice accompanies a disclosure of information concerning a client in alcohol/drug treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by federal confidentiality rules (42 C.F.R. Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is **NOT** sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

SAMPLE PATIENT NOTICE

THIS NOTICE DESCRIBES HOW MEDICAL AND DRUG AND ALCOHOL RELATED INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

General Information

Information regarding your health care, including payment for health care, is protected by two federal laws: the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. § 1320d *et seq.*, 45 C.F.R. Parts 160 & 164, and the Confidentiality Law, 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2. Under these laws, Green Valley Recovery Center (Green Valley) may not say to a person outside Green Valley that you attend the program, nor may Green Valley disclose any information identifying you as an alcohol or drug abuser, or disclose any other protected information except as permitted by federal law.

Green Valley must obtain your written consent before it can disclose information about you for payment purposes. For example, Green Valley must obtain your written consent before it can disclose information to your health insurer in order to be paid for services. Generally, you must also sign a written consent before Green Valley can share information for treatment purposes or for health care operations. However, federal law permits Green Valley to disclose information *without* your written permission:

1. Pursuant to an agreement with a qualified service organization/ business associate;
2. For research, audit or evaluations;
3. To report a crime committed on Green Valley's premises or against Green Valley personnel;
4. To medical personnel in a medical emergency;
5. To appropriate authorities to report suspected child abuse or neglect;
6. As allowed by a court order.

[Insert more stringent protections provided by State law, if any]

For example, Green Valley can disclose information without your consent to obtain legal or financial services, or to another medical facility to provide health care to you, as long as there is a qualified service organization / business associate agreement in place.

Before Green Valley can use or disclose any information about your health in a manner which is not described above, it must first obtain your specific written consent allowing it to make the disclosure. Any such written consent may be revoked by you in writing.

Your Rights

Under HIPAA you have the right to request restrictions on certain uses and disclosures of your health information. Green Valley is not required to agree to any restrictions you request, but if it does agree then it is bound by that agreement and may not use or disclose any information which you have restricted except as necessary in a medical emergency.

You have the right to request that we communicate with you by alternative means or at an alternative location. Green Valley will accommodate such requests that are reasonable and will not request an explanation from you. Under HIPAA you also have the right to inspect and copy your own health information maintained by Green Valley, except to the extent that the information contains psychotherapy notes or information compiled for use in a civil, criminal or administrative proceeding or in other limited circumstances.

Under HIPAA you also have the right, with some exceptions, to amend health care information maintained in Green Valley's records, and to request and receive an accounting of disclosures of your health related information made by Green Valley during the six years prior to your request. You also have the right to receive a paper copy of this notice.

Green Valley's Duties

Green Valley is required by law to maintain the privacy of your health information and to provide you with notice of its legal duties and privacy practices with respect to your health information. Green Valley is required by law to abide by the terms of this notice. Green Valley reserves the right to change the terms of this notice and to make new notice provisions effective for all protected health information it maintains. *[Insert description of how the covered entity will provide individuals with a revised notice.]*

Complaints and Reporting Violations

You may complain to Green Valley and the Secretary of the United States Department of Health and Human Services if you believe that your privacy rights have been violated under HIPAA. *[Insert description of how a complaint is filed with the covered entity.]* You will not be retaliated against for filing such a complaint.

Violation of the Confidentiality Law by a program is a crime. Suspected violations of the Confidentiality Law may be reported to the United States Attorney in the district where the violation occurs.

Contact

For further information, contact *[insert name or title and telephone number of person or office to contact for further information.]*

Effective Date

[Insert date on which notice became effective; cannot be earlier than date on which notice was printed or published.]

Acknowledgement

I hereby acknowledge that I received a copy of this notice.

Dated: _____

(Signature of patient)

**SAMPLE QUALIFIED SERVICE ORGANIZATION/BUSINESS ASSOCIATE AGREEMENT
(QSO/BA AGREEMENT)**

XYZ Service Center ("the Center") and the

(Name of the alcohol/drug program)

(the "Program") hereby enter into an agreement whereby the Center agrees to provide

(Nature of services to be provided to the program)

Furthermore, the Center:

(1) acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received from the Program identifying or otherwise relating to the patients in the Program ("protected information"), it is fully bound by the provisions of the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 142, 160, 162 and 164, and may not use or disclose the information except as permitted or required by this Agreement or by law;

(2) agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(3) agrees to use appropriate safeguards (*can define with more specificity*) to prevent the unauthorized use or disclosure of the protected information;

(4) agrees to report to the Program any use or disclosure of the protected information not provided for by this Agreement of which it becomes aware (*insert negotiated time & manner terms*);

(5) [*agrees to ensure that any agent, including a subcontractor, to whom the Center provides the protected information received from the Program, or created or received by the Center on behalf of the Program, agrees to the same restrictions and conditions that apply through this agreement to the Center with respect to such information;*]*

(6) agrees to provide access to the protected information at the request of the Program, or to an individual as directed by the Program, in order to meet the requirements of 45 C.F.R. ' 164.524 which provides patients with the right to access and copy their own protected information (*insert negotiated time & manner terms*);

(7) agrees to make any amendments to the protected information as directed or agreed to by the program pursuant to 45 C.F.R. § 164.526 (*insert negotiated time & manner terms*);

(8) agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the Program, or created or received by the Center on behalf of the Program, to the Program or to the Secretary of the Department of Health and Human Services for purposes of the Secretary determining the Program's compliance with HIPAA (*insert negotiated time & manner terms*);

(9) [*agrees to document disclosures of protected information, and information related to such disclosures, as would be required for the Program to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 (insert negotiated time & manner terms);*]*

(10) agrees to provide the Program or an individual information in accordance with paragraph (9) of this agreement to permit the Program to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 (*insert negotiated time & manner terms*);

Termination

(1) The program may terminate this agreement if it determines that the Center has violated any material term;

(2) Upon termination of this agreement for any reason, the Center shall return or destroy all protected information received from the Program, or created or received by the Center on behalf of the Program. This provision shall apply to protected information that is in the possession of subcontractors or agents of the Center. The Center shall retain no copies of the protected information.

(3) In the event that the Center determines that returning or destroying the protected information is infeasible, the Center shall notify the Program of the conditions that make return or destruction infeasible *(insert negotiated time & manner terms)*.

Upon notification that the return or destruction of the protected information is infeasible, the Center shall extend the protections of this Agreement to such protected information and limit further uses and disclosures of the information to those purposes that make the return or destruction infeasible, as long as the Center maintains the information.

Executed this _____ day of _____, 200 _____.

President
XYZ Service Center
[address]

Program Director
[Name of the Program]
[address]

*Although HIPAA requires these paragraphs to be included in Business Associate agreements, 42 C.F.R. § 2.11 requires qualified service organizations to abide by the federal drug and alcohol regulations which prohibit such organizations from redisclosing any patient identifying information even to an agent or subcontractor. Legal Action Center has asked HHS for an opinion on this issue.

SAMPLE LETTER IN RESPONSE TO A SUBPOENA
(For use in civil cases)

Dear:

We have received your subpoena requesting [any records] [testimony from program personnel] concerning [name of patient]. Federal confidentiality law and regulations (see 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2) prohibits this program and its personnel from complying with your request or even acknowledging whether or not this individual is or ever was a patient in our program unless [he/she] executes a proper consent form or the court issues an order authorizing disclosure in accordance with Subpart E of the federal confidentiality regulations. (42 C.F.R. § 2.13).

The federal confidentiality law and regulations permit the release of information about current or former patients with written patient consent in a particular form specified in the regulations (See 24 C.F.R. § 2.31) A general medical release is not sufficient.

The federal law and regulations prohibit a program from disclosing information in response to a subpoena (even a judicial Subpoena) unless the subpoena is accompanied by a proper consent or a court issues an order in compliance with the procedures and standards set forth in Subpart E of the regulations, §§ 2.61 – 2.67.

Subpart E of the regulations provides that before the court may issue an order authorizing a program to release patient information, both the alleged patient (or his/her representative) and the program must be notified that a hearing will be held to decide whether an authorizing court order will be issued, and both the patient and the program must be given an opportunity to appear in person or file a responsive statement. (42 C.F.R. § 2.64(b).)

In order to issue an authorizing order the court must find, at or after the required hearing, that "good cause" exists to issue the order (§ 2.64(d)). Section 2.64 provides:

To make this [good cause] determination the court must find that:

- (1) Other ways of obtaining the information are not available or would not be effective; and
- (2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

The federal regulations also limit the kind and amount of records/ information that a court may order a program to release. Section 2.64(e) provides that an order must "limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order" and that only those persons having a need for the information may receive patient records. Section 2.63 provides that a court may not order any disclosure of confidential communications made by a patient to program staff unless one of the three additional conditions is met: (1) the disclosure is necessary to protect against an existing threat to life or of serious bodily injury, (2) the disclosure is necessary in connection with the investigation or prosecution of a very serious crime, such as homicide or rape, or (3) the patient has already offered evidence about confidential communications.

Thus, for the court to issue a court order permitting program personnel to release records/information containing confidential communications by a patient or to testify about any communications made by a patient, it would first have to find that:

- (1) there is no other way to obtain the necessary information, or other ways would be ineffective;
- (2) disclosure would not harm the public interest in attracting people to substance abuse treatment; and
- (3) one of the three specific conditions of § 2.63 has been met.

Since this program has not yet received a proper written consent form from the individual about whom [records/testimony] [is/are] sought, or an authorizing court order that was obtained under 42 C.F.R. Part 2, Subpart E, we are compelled by federal law not to release any information.

This decision was reached after a thorough review of the federal law and regulations governing the confidentiality of alcohol and drug abuse patient records, and is not intended in any way to impede justice.

Sincerely,

Program Director

SAMPLE LETTER IN RESPONSE TO A SUBPOENA
(When a patient is being investigated or prosecuted for a crime)

Dear:

We have received your subpoena requesting [any records] [testimony from program personnel] concerning [name of patient]. Federal confidentiality law and regulations (see 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2) prohibit this program and its personnel from complying with your request or even acknowledging whether or not this individual is or ever was a patient in our program unless the court issues an order authorizing disclosure in accordance with Subpart E of the federal confidentiality regulations. (42 C.F.R. § 2.13).

The federal confidentiality law and regulations prohibit a program from disclosing information in response to a subpoena (even a judicial subpoena) when the information is sought as part of a criminal investigation or prosecution of a patient or former patient unless a court issues an special authorizing order in accordance with Subpart E of the federal regulations, §§ 2.61 - 2.67.

Subpart E of the regulations provides that before the court may issue an order authorizing a program to release patient information sought in a criminal investigation or prosecution, the program must be notified that a hearing will be held to decide whether an authorizing court order will be issued. The program must be given an opportunity to appear in person or file a responsive statement and to be represented by counsel independent of counsel for an applicant for the order who is performing a law enforcement function. (42 C.F.R. § 2.65(b).)

In order to issue an authorizing order, at the required hearing, the court must find that:

- (1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and [criminal] child abuse and neglect;
- (2) There is reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution;
- (3) Other ways of obtaining the information are not available or would not be effective;
- (4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and need for the disclosure; and
- (5) If the applicant for the order is a person performing a law enforcement function, the person holding the records has been given the opportunity to be represented by independent counsel (if the person holding the records is within a government entity, he or she must actually be represented by independent counsel). § 2.65(d).

In addition, § 2.65(e) provides that an order must: (1) "limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order"; (2) "limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of [the] extremely serious crime or suspected crime specified in the application"; and (3) "include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court." § 2.65(e).

Since no authorizing court order has been obtained under 42 C.F.R. Part 2, Subpart E, we are compelled by federal law not to release any information.

This decision was reached after a thorough review of the federal law and regulations governing the confidentiality of alcohol and drug abuse patient records, and is not intended in any way to impede justice.

Sincerely,

Program Director